



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



M & M Ford
PO Box 490
Epsom, NH 03234

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-031**

April 27, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division (the Division) to M & M Ford, pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that fines totaling \$8,000 be imposed against M & M Ford for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. M & M Ford is a New Hampshire corporation having a mailing address of PO Box 490, Epsom, NH 03234.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 146-C authorizes the Department of Environmental Services (DES) to regulate underground storage tank (UST) facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 1401, effective April 22, 1997, which superceded Ws 411 effective September 17, 1985 through November 1, 1990 and Env-Ws 411 effective November 2, 1990 through April 21, 1997).
2. RSA 146-C:10-a authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C, including any rule adopted pursuant thereto. Pursuant to RSA 146-C: 10-a, I, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
3. M & M Ford was the owner of one 1,000-gallon gasoline, two 500-gallon #2 fuel oil, and one 275-gallon used oil underground storage tank (UST) systems that were located at M & M Ford, Route 28, Epsom, NH, further identified as UST #0-115353 (the Facility). The UST systems were removed on October 17, 2000.

4. The Facility is subject to the requirements of RSA 146-C and the rules adopted pursuant to that chapter, NH Admin. Rules Env-Wm 1401.
5. Env-Wm 1401.32(b) requires all existing steel USTs to be protected from corrosion no later than December 22, 1998, by meeting the requirements of Env-Wm 1401.32(i).
6. If a UST does not have corrosion protection, Env-Wm 1401.32(j) requires that the UST be permanently closed.
7. Env-Wm 1401.33(b) requires all existing metal piping that routinely contains regulated substances and is in contact with the soil or other backfill material to have been protected from corrosion no later than December 22, 1998.
8. Division records show that one 1,000-gallon, two 500-gallon, and one 275-gallon steel USTs and metal piping systems at the Facility did not have corrosion protection and that they were not closed by December 22, 1998.

IV. Violations Alleged

1. M & M Ford has violated Env-Wm 1401.32 by failing to protect the four existing steel USTs at the Facility from corrosion or performing permanent closure no later than December 22, 1998.
2. M & M Ford has violated Env-Wm 1401.33 by failing to protect the four existing steel piping systems at the Facility from corrosion no later than December 22, 1998.

V. Proposed Administrative Fines

1. For the violations identified in IV.1. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the four violations noted above, the Division is seeking a total fine of \$4,000.
2. For the violations identified in IV.2. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the four violations noted above, the Division is seeking a total fine of \$4,000.

The total fine being sought is \$8,000.

VI. Hearing, Required Response

M & M Ford has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, July 16, 2001 at 1:00 p.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, M & M Ford is required to respond to this notice. Please respond **no later than June 1, 2001** using the enclosed form as follows:

1. If M & M Ford plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If M & M Ford chooses to waive the hearing and pay the proposed fine, please have an

authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If M & M Ford wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate M & M Ford's interest in settling.

M & M Ford is not required to be represented by an attorney. If M & M Ford chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If M & M Ford wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, M & M Ford must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If M & M Ford does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that M & M Ford committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that M & M Ford committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that M & M Ford proves, by a preponderance of the evidence,** applies in this case:

1. The violation was a one-time or non-continuing violation, **and** M & M Ford did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** M & M Ford did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violations were committed, M & M Ford was making a good faith effort to comply with the requirement that was violated.

3. M & M Ford has no history of non-compliance with DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to M & M Ford.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is M & M Ford s opportunity to present testimony and evidence that M & M Ford did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If M & M Ford has any evidence, such as photographs, business records or other documents, that M & M Ford believes show that M & M Ford did not commit the violation(s) or that otherwise support M & M Ford s position, M & M Ford should bring the evidence to the hearing. M & M Ford may also bring witnesses (other people) to the hearing to testify on M & M Ford s behalf.

If M & M Ford wishes to have an informal meeting to discuss the issues, M & M Ford must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If M & M Ford has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

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COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2 2000*)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Thomas R. Beaulieu, Chief
Lynn A. Woodard, P.E., Supervisor

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APPEARANCE

____ I/we will attend the hearing scheduled for **Monday, July 16, 2001 at 1:00 p.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type):

Title:

WAIVER OF HEARING

____ I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$8,000 paid to Treasurer, State of New Hampshire is enclosed.*

** If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type):

Title:

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095